

**Supplemental Letter of Findings: 01-20140538
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Husband and wife were required to file 2011 Indiana individual income tax return because they were Indiana residents.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Caton v. Dep't of Revenue, 2004 WL 2212147 (Or. Tax Mag. Div. 2004); Dep't of Revenue v. Glass, 15 Or. Tax 117 (Or. T.C. 2000).

Taxpayers protest the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals with a current Florida address. Taxpayers, resided in Indiana more than two decades, had sold their Indiana home in 2007 and purchased a motor home equipped with bedrooms, bathrooms, a kitchen and other amenities. Taxpayers often travel and live in their motor home.

Taxpayers did not file their Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana income tax return, and that Indiana income tax was due for 2011.

Taxpayers timely protested the assessment. An administrative phone hearing was held. Letter of Findings 01-20140538 ("LOF") determined that Taxpayers were Indiana residents and were required to file their Indiana income tax return for the tax year 2011. Subsequently, Taxpayers submitted additional supporting documentation, requesting a rehearing. A rehearing was granted and this Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The LOF determined that Taxpayers were domiciled in Indiana and were required to file their 2011 Indiana income tax return, and that Indiana income tax was due for the 2011 tax year. Taxpayers, to the contrary, claimed that they were not required to file their 2011 Indiana income tax return and they did not owe any Indiana income tax because they were not Indiana residents. The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and therefore were subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of

State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has**

not involved an abandonment of the original domicile and the acquisition of a new one."

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." **"The domicile of any person"** . . . "is, in general, the place which **is in fact his permanent home**, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . .

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.** Id. at 277-78.

(Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988).

(Internal citations omitted) (**Emphasis added**).

In this instance, to support their rehearing request, Taxpayers submitted documents that they sold their Indiana house in 2007. Additionally, Taxpayers offered copies of invoices regarding their lease of RV Park in Florida, sample monthly bank statements and checks listing their Florida address, and electricity bills for their stay in the RV Park in Florida during 2011. Taxpayers also provided copies of Husband's medical bills and explanation of benefit statements concerning his medical treatments in Florida.

Upon review, there is no dispute that Taxpayers sold their Indiana house in 2007; that Taxpayers obtained Florida driver's licenses as well as registered and insured their vehicles, including motor home, in Florida; and that Taxpayers lived in their motor home which parked in a lot of RV Park in Florida for several months in 2011. Taxpayers may qualify to be Florida residents. But, as mentioned earlier, a person can have more than one residence and can be a resident of more than one state. A person however can only have one domicile.

For Indiana income tax purposes, as mentioned earlier, a taxpayer is considered an Indiana resident and is required to file an Indiana income tax return reporting his or her income when the taxpayer is domiciled in Indiana. Upon further review, Taxpayers here live in their motor home which they drive from one place to another. Their motor home is not "true, fixed, permanent home, habitation, and principal establishment" although their motor home is equipped with bedrooms, bathrooms, a kitchen, and other amenities. See *Caton v. Dep't of Revenue*, 2004 WL 2212147 (Or. Tax Mag. Div. 2004) (explaining that self-propelled motor home in which the plaintiff-taxpayer lived did not constitute a permanent place of abode outside of Oregon because it is not a fixed location); see also *Dep't of Revenue v. Glass*, 15 Or. Tax 117 (Or. T.C. 2000) (concluding that a taxpayer was domiciled in Oregon although he lived in and worked in a truck operating entirely outside Oregon). Taxpayers here did not register to vote and did not vote in Florida. Since Florida does not tax on individual income, Taxpayers did not file their 2011 Florida income tax return. Taxpayers listed their Indiana address as their mailing address on various important correspondences, including banking and Medicare benefits. Taxpayers leased the RV Park on a seasonal basis and paid the rent through one of their bank accounts which contained an Indiana address. Husband sought medical treatments in Florida during their stay but his health insurance information, including Medicare Summary Notices and Explanation of Benefit Payments were sent to the Indiana address designated by Taxpayers. Additionally, Taxpayers' electricity bills in Florida were from January 20 through March 21, 2011, and from September 30 through December 21, 2011, which is less than 180 days. Moreover, Taxpayer provided copies of their monthly bank statements which had their Florida address; the statement however showed that they deposited \$400 and had no significant financial activities during 2011 and merely maintained a minimum balance less than \$400. Taxpayers' documents established that they drive and live in their motor home; that they only intended to stay in Florida for less than 180 day each year, that they have not effectively abandon Indiana as their state of domicile; and that they have yet established a new one domicile.

In short, any individual who was domiciled in this state during the taxable year is resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." *Bayh*, 521 N.E.2d at 1317-18. Taxpayers' supporting documentation demonstrated otherwise.

FINDING

Taxpayers' protest is respectfully denied.

Posted: 12/30/2015 by Legislative Services Agency
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